

HUMAN SERVICES BOARD

INTRODUCTION

3. The petitioner has faced difficulties finding employment commensurate with her education. During August 2009, petitioner informed the Department that she was

returning to school for an additional bachelor's degree in public communications and was reducing her work hours from full-time to part-time.

4. Petitioner works as an administrative assistant at the Department of Health. Starting September 2009, petitioner works approximately twenty hours per week.

5. Starting September 1, 2009, the Department approved petitioner for a child care subsidy based on the service need of part-time employment. The Department provides a subsidy at 100 percent of the scale for part-time childcare or twenty hours per week. The Department did not approve a service need based on education for an additional twenty hours per week because the regulations do not allow an education service need for post-bachelor education.

6. The petitioner requested a variance for the service need based on education on or about September 18, 2009.

7. The Department denied the request for a variance on or about October 8, 2009. Petitioner's request for a fair hearing was filed on or about October 30, 2009. The Commissioner's Review affirming the variance request was made on or about January 8, 2010.

ORDER

The Department's decision is affirmed.

REASONS

The Legislature promulgated a child care subsidy program whose purposes are set out in 33 V.S.A. § 3512 as follows:

(a) A child care services program is established to subsidize, to the extent that funds permit, the costs of child care for families that need child care services in order to obtain employment, to retain employment. . .

(b) The subsidy authorized by this section shall be on a sliding scale basis. The scale shall be established by the commissioner, by rule, and shall bear a reasonable relationship to income and family size. The lower limit of the fee scale shall include families whose gross income is up to and including 100 percent of the federal poverty guidelines. The upper limit of the fee scale shall be neither less than 82.5 percent nor more than 100 percent of the state median income, adjusted for the size of the family. The scale shall be structured so that it encourages employment.

The child care subsidy program is not an entitlement program. To effectuate the program, the commissioner has promulgated regulations entitled Child Care Financial Assistance Program Regulations (CCFA).

The eligibility criteria are set out in CCFA II.A and include the requirement that the family have a service need. The service needs are found at CCFA II.B. In particular, the training and education service need is defined at CCFA II.B.1.e as follows:

The primary caretaker(s) must demonstrate participation

in a program which, in the opinion of the Commissioner, is likely to lead to employment within one year after completion of the program. This need can also be established if the training or education program is required to maintain employment.

Approved training programs include, without limitation, the following:

1. Work programs, training programs, and other activities approved by DCF's Economic Services Division as part of the caretaker's family development plan;
2. Work or training programs approved by the Department of Labor;
3. Work study programs or training programs related to employment;
4. High school, public or private, and high school equivalency programs such as Adult Basic Education (ABE) or General Equivalency Diploma (GED);
5. Post-secondary courses at an accredited or recognized institution of higher education offering certification or associate and bachelor degree course work;
6. Non-traditional and/or on line training approved on an individual basis; and
7. Community service time/training.

Authorization of child care financial assistance is limited to the number of days and hours related to training or education as determined by CDD. Travel time up to two hours per day between the child care facility and place of the training program may be included in the determination.

Volunteer work and post-bachelor education are not eligible activities. (emphasis added).

The crux of this case is the meaning of post-bachelor education. The Department argues that the language of the regulation is controlling and that holding a bachelor's degree makes any further college education post-bachelor. In other words, "post-bachelor" refers not only to masters or graduate level work but also to a second bachelor's degree. The petitioner originally argued that the language was limited to graduate level of work. Then, petitioner argued that she was engaged in a training program that could lead to employment within one year due to her participation for credit in a community service placement.¹

The regulatory language does not limit "post-bachelor education" to graduate level education. The burden of showing that the Department abused its discretion is steep and has not been met by the petitioner in this case. The Department's decision is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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¹Post hearing, petitioner filed a memorandum before the Board that she was not requesting a variance but met the language of the regulations. However, the record indicates that her 3 credit service learning course (forty-five hours) was only one part of her credits towards a Public Communication Degree.